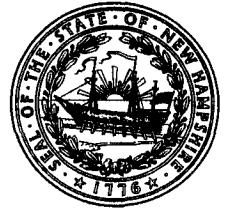




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Sherwood Forest Manufactured Homes, Inc.  
Attention: Daniel Britton, Vice President  
317 Sherwood Forest  
Exeter, NH 03833

Re: Sherwood Forest Mobile Homes  
Exeter, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 05-070**

August 1, 2005

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Sherwood Forest Manufactured Homes, Inc., pursuant to RSA 485-A:22 and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$8,000 be imposed against Sherwood Forest Manufactured Homes, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Sherwood Forest Manufactured Homes, Inc. ("Sherwood Forest") is a New Hampshire corporation having a mailing address of 317 Sherwood Forest, Exeter, NH 03833.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 - 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Pursuant to RSA 485-A:8 and related sections, DES regulates attaining and maintaining specific standards of water quality to achieve the purposes of the legislative classification of surface waters of the State.
3. Sherwood Forest owns and operates the sewerage system ("the system") at the mobile home community in Exeter, NH known as Sherwood Forest Mobile Homes, and thus is responsible for the system and the sewage it conveys.
4. Pursuant to RSA 485-A:13, I(a) it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from DES.

5. On June 27, 2005 the system had an overflow of sewage at the manhole on Lancelot Street. Sewage went into a catch basin on Lancelot Street by Powder Mill Bridge, at an estimated rate of 50 gallons per minute for one hour, and discharged to the Exeter River three miles upstream of the Exeter drinking water intake.
6. On July 4, 2005 the system had another overflow of sewage at the manhole on Lancelot Street at an estimated rate of 20 gallons per minute for one hour, and discharged to the Exeter River three miles upstream of the Exeter drinking water intake.
7. The Exeter River at the point of discharge for the two documented sewage overflow events (June 27, 2005 and July 4, 2005) is a class B surface water of the State, and furthermore, is the drinking water source for the Town of Exeter.
8. Pursuant to RSA 485-A:8,II class B waters shall contain not more than 406 Escherichia coli per 100 millimeters in any one sample.
9. The Division asserts that the sewage discharged during the two documented sewage overflow events contained bacteria in excess of 406 Escherichia coli per 100 millimeters, based on typical characteristics of sewage of the type discharged.

#### **IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES**

1. Sherwood Forest Manufactured Homes, Inc. has violated RSA 485-A:13,I(a) by discharging sewage to a surface water of the State without a written permit from DES, on two separate occasions. For these violations, Env-C 603.05(a) specifies a fine of \$2000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. For the sewage overflow events of June 27, 2005 and July 4, 2005, the Division is seeking a fine of \$2,000 per event for a total of \$4,000 for these violations.
2. Sherwood Forest Manufactured Homes, Inc. has violated RSA 485-A:8,II by discharging sewage to a surface water of the State which did not meet surface water criteria for bacteria, on two separate occasions. For this violation, Env-C 603.08(c) specifies a fine of \$2,000 per violation of surface water quality standards for each parameter violated. For the sewage overflow events of June 27, 2005 and July 4, 2005, the Division is seeking a fine of \$2,000 per event for a total of \$4,000 for these violations of bacteria standards in the Exeter River.

**The total fine being sought is \$8,000.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, Sherwood Forest is required to respond to this notice. Please respond no later than September 6, 2005 using the enclosed colored form.**

1. If Sherwood Forest would like to have a hearing, please have an authorized representative sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address

noted on the form.

2. If Sherwood Forest wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance form, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If Sherwood Forest chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

Sherwood Forest is not required to be represented by an attorney. If Sherwood Forest chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

## VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Sherwood Forest committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the Sherwood Forest committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Sherwood Forest proves, by a preponderance of the evidence, applies in this case:**


1. The violation was a one-time or non-continuing violation, **and** the Sherwood Forest did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the Sherwood Forest did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Sherwood Forest was making a good faith effort to comply with the requirement that was violated.
3. Sherwood Forest has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the Sherwood Forest's case which was not known to the Division at the time the fine was proposed.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Sherwood Forest committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Sherwood Forest's opportunity to present testimony and evidence that Sherwood Forest did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Sherwood Forest has any evidence, such as photographs, business records or other documents, that Sherwood Forest believes show that Sherwood Forest did not commit the violation(s) or that otherwise support Sherwood Forest's position, the Sherwood Forest should bring the evidence to the hearing. Sherwood Forest may also bring witnesses (other people) to the hearing to testify on Sherwood Forest's behalf.

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Sergios Spanos, WWEB Compliance and Enforcement Subsection  
George Berlandi, Supervisor, WWEB Permits and Compliance Section  
cc: Joy Hilton, EPA Enforcement  
Michael G. Britton, Linden St., Box 317, Exeter, NH 03833 (registered agent)  
Victoria Del Greco, Exeter Water & Wastewater Superintendent

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**SHERWOOD FOREST MANUFACTURED HOMES, INC. IS REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN September 6, 2005**

Please check the appropriate line and fill in the requested information below.

**APPEARANCE** On behalf of Sherwood Forest Manufactured Homes, Inc.:

\_\_\_\_\_ I request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Sherwood Forest Manufactured Homes, Inc.:

\_\_\_\_\_ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$8,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit**

**Attn: Michael Sclafani, Legal Assistant**

**P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

CO-2

2002

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.